

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SEDRIC EUGENE JOHNSON,  
CDCR #AZ-2648,

Plaintiff,

vs.

SAN DIEGO COUNTY SHERIFF'S  
DEPARTMENT, et al.,

Defendants.

Case No.: 3:15-cv-2789-WQH-KSC

**ORDER DISMISSING CIVIL  
ACTION FOR FAILING TO  
STATE A CLAIM PURSUANT  
TO 28 U.S.C. § 1915(e)(2)(B)(ii) AND  
§ 1915A(b)(1) AND FOR FAILING  
TO PROSECUTE IN COMPLIANCE  
WITH COURT ORDER  
REQUIRING AMENDMENT**

SEDRIC EUGENE JOHNSON ("Plaintiff"), currently incarcerated at Centinela State Prison in Imperial, California, and proceeding pro se, first initiated this civil action in December 2015, when he filed a pleading from George Bailey Detention Facility on San Diego Sheriff's Department stationery containing allegations of excessive force and interference with his mail by unidentified San Diego County Sheriff's Department officials (Doc. No. 1).

**I. Procedural History**

On February 1, 2016, and in light of Plaintiff's pro se status, the Court liberally construed his pleading as an attempt to file a civil rights complaint pursuant to 42 U.S.C. § 1983. *See* Doc. No. 8 at 2. Because Plaintiff did not prepay the civil filing fee required

1 by 28 U.S.C. § 1914(a) or file a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to  
2 28 U.S.C. § 1915(a), however, the Court dismissed the case. *See id.* at 5. In addition, the  
3 Court also found Plaintiff’s pleading failed to comply with FED. R. CIV. P. 3, 8(a)(1)-(3)  
4 and 12(h)(3), but granted him 45 days leave in which to re-open his case by either paying  
5 the filing fee *or* filing an IFP motion *and* filing a First Amended Complaint that  
6 contained factual matter sufficient to show that “each Government-official defendant he  
7 wishe[d] to sue, ‘through the official’s own *individual* actions, ha[d] violated the  
8 Constitution.’” *Id.* at 2-4 (emphasis added) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 676  
9 (2009)).

10 After he was granted two generous extension of time (Doc Nos. 11, 14), Plaintiff  
11 filed a Motion to Proceed to Proceed IFP and a First Amended Complaint (Doc. Nos. 15,  
12 16), followed by several letters and miscellaneous documents which the Court directed  
13 the Clerk to file despite Local Rule 83.9, which prohibits ex parte communications with  
14 the Court (Doc. Nos. 17-20).

15 On July 26, 2016, the Court granted Plaintiff leave to proceed IFP, but sua sponte  
16 dismissed his First Amended Complaint for failing to state a claim upon which relief can  
17 be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1) (Doc. No. 21).  
18 The Court provided Plaintiff with a clear and detailed explanation of all his pleading  
19 deficiencies, and granted him “one more chance” to fix them. (*See* Doc. No. 21 at 6-11.)  
20 Plaintiff had 45 days, or until approximately September 9, 2016, to file his Second  
21 Amended Complaint, and he was warned if he failed to do so, his case would be  
22 dismissed without further leave to amend. (*Id.* at 12, *citing Lira v. Herrera*, 427 F.3d  
23 1164, 1169 (9th Cir. 2005) (“If a plaintiff does not take advantage of the opportunity to  
24 fix his complaint, a district court may convert the dismissal of the complaint into a  
25 dismissal of the entire action.”)).

26 Plaintiff has since continued to write letters in violation of Local Rule 83.9 (Doc.  
27 Nos. 23, 25, 27), which the Court has filed and considered despite having previously  
28 warned Plaintiff that they might be rejected or stricken. *See* Doc. No. 21 at 2 n.1 (citing

1 S.D. CAL. CIVLR 83.1.) Plaintiff's letters are barely legible and they make reference to  
 2 "judicial standards," the "California Rules of Professional Conduct," and the "Citizen's  
 3 Law Enforcement Review Board," but none of them mention any previously named  
 4 Defendant, or include any factual allegations to plausibly suggest Plaintiff filed them in  
 5 an effort to serve an as amended pleading in compliance with the Court's July 26, 2016  
 6 Order. *See* Doc. Nos. 23, 25, 27.

7 Even if the Court were to consider Plaintiff's letters to be his Second Amended  
 8 Complaint, they simply fail to contain any "short and plain statement of the claim  
 9 showing that [Plaintiff] is entitled to relief" as required by FED. R. CIV. P. 8(a)(2). *See*  
 10 *Iqbal*, 556 U.S. at 677-78. And while the Court "ha[ ]s an obligation where the petitioner  
 11 is pro se, particularly in civil rights cases, to construe the pleadings liberally and to afford  
 12 the petitioner the benefit of any doubt," *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th  
 13 Cir. 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not  
 14 "supply essential elements of claims" that have not been pled. *Ivey v. Board of Regents of*  
 15 *the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

16 Therefore, the Court finds that because Plaintiff has had ample opportunity to  
 17 either file a Second Amended Complaint, or request an extension of time in which to do  
 18 so, but has failed to do either, his case must now be dismissed. *See Edwards v. Marin*  
 19 *Park*, 356 F.3d 1058, 1065 (9th Cir. 2004) ("The failure of the plaintiff eventually to  
 20 respond to the court's ultimatum—either by amending the complaint or by indicating to  
 21 the court that it will not do so—is properly met with the sanction of a Rule 41(b)  
 22 dismissal.").

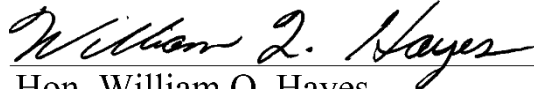
## 23 **II. Conclusion and Order**

24 Good cause appearing, the Court **DISMISSES** this civil action in its entirety  
 25 without further leave to amend based on Plaintiff's failure to state a claim upon which  
 26 § 1983 relief can be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1),  
 27 and his failure to prosecute pursuant to FED. R. CIV. P. 41(b) in compliance with the  
 28 Court's July 26, 2016 Order.

1 The Court further **CERTIFIES** that an IFP appeal would not be taken in good  
2 faith pursuant to 28 U.S.C. § 1915(a)(3) and **DIRECTS** the Clerk of Court to enter a  
3 final judgment of dismissal and to close the file.

4 **IT IS SO ORDERED.**

5 Dated: October 28, 2016

  
Hon. William Q. Hayes

United States District Court